

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN OF TEXAS
SAN ANTONIO DIVISION**

SIERRA 6300, LLC

Plaintiff,

v.

**EVEREST INDEMNITY INSURANCE
COMPANY**

Defendants.

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Civil Action No. 5:21-cv-279

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant Everest Indemnity Insurance Company (“Everest” or “Defendant”) files this Notice of Removal on the basis of diversity of citizenship and jurisdictional amount, and respectfully shows the Court the following:

REMOVAL IS TIMELY

1. Everest is the Defendant in Cause No. 2021CI02564 filed in the 438th Judicial District Court of Bexar County, Texas, styled *Sierra 6300, LLC v. Everest Indemnity Insurance Company*. Plaintiffs commenced this civil action against Everest in the state court on February 2, 2021. Everest was first served with Plaintiff’s Original Petition (the “Petition”) on February 17, 2021.

2. Therefore, service of process in this cause was served on Everest not more than thirty (30) days before the filing of this notice, and this Notice of Removal is being filed within one year of the date suit was first filed in state court.

BASIS FOR REMOVAL

3. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

A. There is Complete Diversity

4. In its Original Petition, Plaintiff Sierra 6300 LLC (“Sierra 6300”) acknowledges that it is a limited liability company residing in 6300 Rue Marielyne Street, San Antonio, Texas 78238.

5. Plaintiff Sierra 6300 is a limited liability company incorporated and existing under the laws of Texas, keeping its business address and registered office in Dallas, Texas. Upon information and belief, Plaintiff’s only manager is George Ullrich. Mr. Ulrich is a resident of Brea, California and a citizen of the State of California.

6. Both at the time the lawsuit was originally filed, and at the time of removal, Defendant Everest is a corporation incorporated and existing under the laws of Delaware, keeping its principal place of business in New Jersey.

B. The Amount in Controversy Exceeds \$75,000.00

7. This is a civil action in which the amount in controversy exceeds the jurisdictional limits of \$75,000.00. In determining the amount in controversy, the Court may consider, “penalties, statutory damages, and punitive damages.” *St Paul Reinsurance Co, Ltd v Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see also Ray v State Farm Lloyds*, 1999 WL 151667, at *2 - 3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff’s case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish). Plaintiff alleges that Everest is liable for breach of contract, common law fraud, conspiracy to commit fraud, common law and statutory bad faith, and violations of Chapters 541 and 542 of the Texas Insurance. Plaintiffs seek to recover actual damages, exemplary damages, compensatory damages, additional statutory damages, post-judgment interest, and reasonable and necessary attorneys’ fees. Plaintiff’s Original Petition

identifies monetary relief of at least \$1,000,000.00. Accordingly, the amount in controversy clearly exceeds \$75,000.¹

8. Accordingly, by virtue of diversity of citizenship the United States district courts have original jurisdiction.

STATE COURT DOCUMENTS BEING FILED

9. Pursuant to 28 U.S.C. §1446(a), attached hereto as Exhibit “A” is the Index of Matters Being Filed that clearly identifies each document and indicates the date the document was filed in state court. Attached as Exhibit “B” is a copy of the docket sheet, and all documents filed in the state court action are attached.

PRAYER

Therefore, based upon 28 U.S.C. §§1441 and 1446, Everest respectfully requests that this action be removed to the United States District Court for the Western District of Texas, San Antonio Division, and that it be granted such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Christopher H. Avery

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**ATTORNEYS FOR DEFENDANT
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¹ See, e.g., *Theodoridis v. Balboa Ins. Co.*, CV G-10-497, 2011 WL 13257650, at *1 (S.D. Tex. Feb. 3, 2011), *report and recommendation adopted*, CV G-10-497, 2011 WL 13257647 (S.D. Tex. Feb. 24, 2011) (denying Motion to Remand where pre-suit demand letter sought approximately \$46,000).

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March, 2021, a true and correct copy of the foregoing instrument has been forwarded to all counsel of record.

/s/ Christopher H. Avery

CHRISTOPHER H. AVERY